

**United Food Processors, Ltd., A California Limited Partnership; United Food Processors, Ltd., A California Limited Partnership, in its Capacity as Debtor in Possession and United Industrial Workers, Service, Transportation, Professional and Government of North America, of the Seafarers' International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO. Case 21-CA-28765**

September 30, 1992

## DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDAUGH

Upon a charge filed by United Industrial Workers, Service, Transportation, Professional and Government of North America, AFL-CIO, the General Counsel of the National Labor Relations Board issued a complaint on July 30, 1992, against United Food Processors, Ltd., A California Limited Partnership, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.<sup>1</sup>

On September 11, 1992, the General Counsel filed a Motion for Summary Judgment. On September 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary

<sup>1</sup> On or about May 19, 1992, the Respondent filed a voluntary petition under Chapter 11 of the Bankruptcy Code. Pursuant to the bankruptcy petition, the Respondent has been designated by the Bankruptcy Court for the Central District of California as the debtor in possession, with full authority to continue operations and exercise all powers necessary to the administration of the business of the Respondent. The complaint alleges and we find that the Respondent Debtor is an alter ego of the Respondent.

It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a Governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited there.

Judgment disclose that the Regional attorney, by letter dated August 18, 1992, notified the Respondent that, unless an answer was received by August 25, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a California Limited Partnership, with an office and place of business in Terminal Island, California, has been engaged in the canning, processing, and wholesale sale of fish and seafood. During the 12-month period ending May 31, 1992, the Respondent sold and shipped from its Terminal Island, California facility goods valued in excess of \$50,000 directly to Star-Kist Food, Inc. located in Long Beach, California, which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees and all shipping and receiving employees employed by the Respondent at its facility on Terminal Island, California; excluding all other employees, office clerical employees, professional employees, employees covered by an agreement with the International Union of Operating Engineers, guards and supervisors as defined in the Act.

Since at least 1987, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the unit described above, and since at least 1987, the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms and extension from October 6, 1987, to June 1, 1992.

At all material times since at least 1987, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since March 1992, the Respondent has changed the terms and conditions of employment of its unit employees by failing to remit contributions to the United Industrial Workers of North America Welfare Plan for its employees' medical insurance as required by the

collective-bargaining agreement effective October 6, 1987, to June 1, 1992.

Since in or about May 1992, the Respondent has changed the terms and conditions of employment of its unit employees by refusing and failing to pay the employees accumulated wages and accumulated vacation pay as required by the collective-bargaining agreement. The Respondent made these changes without prior notice to or bargaining with the Union and without the consent of the Union.

These subjects relate to wages, hours, and other terms and conditions of employment and are mandatory subjects of bargaining.

On or about May 15, 1992, the Respondent ceased operations and terminated or laid off all its unit employees.

Since on or about May 13, 1992, the Union has requested that the Respondent bargain with it over the effects of the Respondent's cessation of operations and the Respondent has refused to do so.

#### CONCLUSION OF LAW

By failing and refusing to bargain with the Union, regarding the effects of its decision to cease operations at its Terminal Island facility, as the exclusive collective-bargaining representative of the unit, failing to remit contributions to the United Industrial Workers of North America Welfare Plan, and failing to pay the employees accumulated wages and accumulated vacation pay, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent failed to make contractually required trust fund payments for health and welfare, and accumulated wages and vacation pay, we shall order the Respondent to make whole the unit employees by making all payments that have not been made, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its Terminal Island facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing the Terminal Island facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated Terminal Island employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of the Terminal Island facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) The Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from May 15, 1992, the date on which the Respondent terminated its Terminal Island operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *New Horizons for the Retarded*, supra.

In view of the fact that the Respondent's Terminal Island, California facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

### ORDER

The National Labor Relations Board orders that the Respondent, United Food Processors, Ltd., A California Limited Partnership, Terminal Island, California, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Failing and refusing to bargain with the Union, regarding the effects of its decision to cease operations at its Terminal Island facility, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees and all shipping and receiving employees employed by the Respondent at its facility on Terminal Island, California; excluding all other employees, office clerical employees, professional employees, employees covered by an agreement with the International Union of Operating Engineers, guards and supervisors as defined in the Act.

(b) Failing and refusing to honor all the terms and conditions of its 1987-1992 contract with the Union by failing to remit trust fund contributions to the United Industrial Workers of North America Welfare Plan for its employees' medical coverage.

(c) Failing and refusing to pay accumulated wages and accumulated vacation as required by the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive bargaining representative of the unit employees with respect to the effects on employees of its decision to close its Terminal Island facility and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Pay the former Terminal Island unit employees terminated by the Respondent when it closed its Terminal Island facility in May 1992 their normal wages for the period set forth in the remedy section of the Decision and Order.

(c) Remit all amounts owed to the United Industrial Workers of America Welfare Plan, in the manner set forth in the remedy section of the Decision and Order, and make the employees whole for loss of moneys or benefits resulting from the Respondent's discontinuing contractually required contributions to the welfare plan.

(d) Pay the former Terminal Island unit employees accumulated wages and vacation pay, due and owing on May 15, the date the Respondent ceased operations at its Terminal Island facility.

(e) Make the unit employees whole for any losses attributable to its failure to pay fringe benefit amounts, accumulated wages, and accumulated vacation pay, in the manner set forth in the remedy section of this decision.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under this Order.

(g) Mail an exact copy of the attached notice marked "Appendix,"<sup>2</sup> to United Industrial Workers, Service, Transportation, Professional and Government of North America, of the Seafarers' International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO and to all employees in the unit who were employed by the Respondent at its former Terminal Island facility. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt thereof as here directed.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Industrial Workers, Service, Transportation, Professional and Government of North America, of the Seafarers' International Union of North America, Atlantic, Gulf Lakes and Inland Waters District, AFL-CIO, as the exclusive bargaining representative of our unit employees, regarding the effects on employees of our decision to cease operations. The appropriate unit is:

All production and maintenance employees and all shipping and receiving employees employed

by us at our facility on Terminal Island, California; excluding all other employees, office clerical employees, professional employees, employees covered by an agreement with the International Union of Operating Engineers, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to pay trust fund contributions to the United Industrial Workers of North America Welfare Plan, as required by the collective-bargaining agreement, which was effective for the period October 6, 1987, to June 1, 1992.

WE WILL NOT fail and refuse to pay to our employees all accumulated wages and accumulated vacation pay, as required by the collective-bargaining agreement, which was effective for the period October 6, 1987, to June 1, 1992.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining rep-

resentative of the unit employees regarding the effects of our decision to cease operations at our Terminal Island facility and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL pay the former Terminal Island employees we terminated when we closed our terminal Island facility in May 1992 their normal wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL make the unit employees whole for any losses suffered by them as a result of our failure to remit trust fund contributions to the United Industrial Workers of North America Welfare Plan, and our failure to pay accumulated but unpaid wages and all accumulated but unpaid vacation pay, plus interest.

UNITED FOOD PROCESSORS, LTD., A  
CALIFORNIA LIMITED PARTNERSHIP